

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2209 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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DUDH SAGAR DAIRY EMPLOYEES CREDIT & SUPPLY CO OP SOCIETY

Versus

SM DUBE ASSTT COMMR OF INCOME TAX

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Appearance:

MR KA PUJ for Petitioner

MR MANISH R BHATT for Respondent No. 1, 2

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 28/04/99

ORAL JUDGEMENT

#. The petitioner challenges notice issued under Section 148 read with Section 147 of the Income Tax Act on 24.2.1995 in respect of assessment year 1990-91. The facts giving rise to this petition are that the assessee is a Cooperative society. It claimed deduction

of certain sum on account of bonus payment and death benefits made to the persons who were members of the society. The claim of assessee was allowed in the first instance, on assessment order under Section 143(3). On 19.9.94 during the course of hearing for the assessment for Assessment year 1992-93 the assessing officer issued a show cause notice to the petitioner asking why action under Section 147 should not be initiated against him for the assessment years 1988-89 and 1990-91. The burden of the show cause notice was that the bonus payment made to the members of the society was not admissible as a revenue expenditure under Section 37 of the Act and the income was not correctly ascertained under Section 80P(a)(i). Reply to show cause notice was submitted. Thereafter on 24.2.95, notice for filing return under Section 148 was issued in respect of assessment years 1988-89 to 1990-91. The petitioner challenged the said notices by separate writ petitions, Special Civil Applications Nos. 2207 and 2208 of 1995 relating to assessment year 1988-89 and 1989-90 respectively by a separate order it was found that the initiation of proceedings for the two assessment years was beyond the time prescribed under proviso to Section 147, and the same have been quashed.

#. The plea of notice being beyond the period prescribed under Section 147 is not available in the case. However, it is urged by learned counsel for the petitioner that from the facts surrounding the issuance of notice is apparent that the issuance of notice is merely on the change of opinion and it was also pointed out that the holding of the belief about the escapement of that income for the reasons disclosed in show cause notice is mere pretence and not real one. In this connection the assessee pointed out that for the assessment year 1991-92 The Assessing Officer has not allowed the claim of the assessee in respect of bonus paid to the members of the society. However, on further appeal, CIT (Appeals) following a Full Bench decision of this Court in Karjan Cooperative Cotton Sales Ginning and Press Socieity v. CIT 199 ITR 17 the decision of the CIT (Appeals) in respect of assessment year 1991-92 has been accepted by the revenue. So also in the case of succeeding year 1992-93 though additions were made by Assessing Officer, the same were deleted by the CIT (Appeals) on the very same ground and the same has been accepted by the revenue and the matter rest at that.

#. In these circumstances, it is urged by learned counsel for the petitioner that holding of Assessing Officer for initiating proceedings under Section 148 read

with 147 is mere pretence.

#. While learned counsel for the revenue is not in a position to dispute the facts about the allowance of the claim by the CIT (Appeals) for succeeding years and its acceptance by the Revenue but urged that it is not a case of change of opinion and the question on the merit on the liability of deduction claimed by the assessee can be urged before the Assessing Officer on the basis of the orders of the CIT (Appeals) and he may avail of the same benefit.

#. Having considered the rival contentions, in thin the peculiar facts and circumstances of the case, we are of the opinion that the fact that for the years in question allowance had been made and for succeeding years also when the bonus benefits around which the question of reopening centers has ultimately been answered in favour of the assessee by the CIT (Appeals) which has been accepted by the revenue, no useful purpose would be served by keeping this proceedings for reassessment for one single year which lies between the 4 assessment years as notice above for the academic purpose. In the interest of justice, we consider it just and proper to quash the impugned orders.

Accordingly this petition is allowed. Rule is made absolute. There shall be no order as to costs.

(Rajesh Balia, J) (A.R. Dave, J)